

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

File No. 122473-001

v

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this ____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On July 1, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On July 28, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The Petitioner receives health care benefits under a benefit plan underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 2, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner receives health benefits through the *Community Blue Group Benefits Certificate* (the certificate). In addition, two riders related to the Petitioner's deductible requirements:

- *Rider CBD \$1500-P Community Blue Deductible Requirement for Panel Services*, and
- *Rider CBD \$3000-NP Community Blue Deductible Requirement for Non Panel Services*.

From January 5 through December 21, 2010, the Petitioner received services from panel and nonpanel providers. BCBSM provided coverage based on the network status of the provider. Claims were processed in the order in which they were received, and deductible amounts applied based on the respective status of the provider.

Petitioner believes BCBSM charged an in-network deductible of \$2,975.43 when the maximum deductible is \$1,500.00 for the calendar year. She believes BCBSM should apply the nonpanel deductible for services she received from XXXXX, a non-participating provider to the in-network deductible.

The Petitioner appealed BCBSM's denial of application of the nonpanel deductible towards panel services through its internal grievance process. BCBSM maintained its determination and issued its final adverse determination dated June 16, 2011.

III. ISSUE

Did BCBSM correctly apply Petitioner's deductible payments?

IV. ANALYSIS

Petitioner's Argument

In her July 1, 2011 request for external review, Petitioner's husband wrote:

Blue Cross charged excess in-network deductible for the 2010 calendar year. The in-network deductible was \$1,500.00 and Blue Cross actually charged an in-network deductible of \$2,975.43 for the 2010 calendar year. Blue Cross states that "claims are processed in the order that they are received". That statement is not written in any Blue Cross document. The patient is asking that all claims be processed under the terms of Blue Cross written coverage documents. The patient is asking for a \$1,500.00 refund of excess in-network deductible that was charged in 2010.

In an April 20, 2011 letter to BCBSM, Petitioner's husband wrote:

For my spouse, Barbara the following deductibles were applied in 2010:

Deductible Required for Year	\$1,500.00
Deductible Applied Year to Date	\$1,500.00
Out-of-Network Deductible Required for Year	\$3,000.00
Out-of-Network Deductible Required for Year	\$2,975.43

I have attached a copy of the Explanation of Benefits payment dated February 15, 2011 which confirms these deductibles.

My Benefit Guide states the "Out-of-Network Deductible amounts also apply to-

ward the In-Network Deductible". Accordingly the \$2,975.43 Out-of-Network deductible should satisfy the full \$1,500.00 In-Network deductible. I am asking for reimbursement of the \$1,500.00 In-Network deductible.

Your letter of April 5, 2011 states that claims are processed in the order in which they are received, not date of service. It is my position that the timing of submitting claims should not change my coverage. Further, there are no written rules by Blue Cross which support your decision.

BCBSM's Argument

In its June 16, 2011 final adverse determination, BCBSM stated:

...[O]ut-of network deductible amounts also apply toward the in-network deductible. As you know, your wife received services from a non-panel provider. Our approved amounts for those services totaled \$2,975.00 and applied to the out-of-network deductible cost share. Additionally, of that amount, \$1,500.00 also applied to the in-network deductible. The deductible cost share applied appropriately. Thus, reimbursement of the in-network deductible is not due as an overage has not occurred.

* * *

With regards to claims processing, claims are processed in the order that they are received. Professional providers may submit claims up to 15 months from the date of service. Facility providers may submit claims up to one year from the date of service. However, Blue Cross Blue Shield has no control as to when providers submit claims. Subsequently, claims are processed upon receipt, not by date of service.

Commissioner's Review

Under the riders, enrollees are required to meet separate deductible amounts for panel and nonpanel provider categories. The riders state in pertinent part:

Rider CBD \$1500-P Deductible Requirements

Panel Providers

You are required to pay the following deductible each calendar year for most covered services provided by panel providers:

- \$1,500 for one member
- \$3,000 for the family (when two or more members are covered under your contract)

* * *

NOTE: Amounts applied toward an annual deductible for nonpanel services also count toward the deductible for panel services. However, deductible amounts for panel services are not applied toward the deductible for nonpanel services.

**Rider CBD \$3000-NP
Deductible Requirements**

Nonpanel Providers

You are required to pay the following deductible each calendar year for most covered services provided by nonpanel providers:

- \$3,000 for one member
- \$6,000 for the family (when two or more members are covered under your contract)

* * *

NOTE: If you are required to pay a deductible for panel services, amounts applied toward your annual deductible for nonpanel services also count toward the deductible for panel services. However, deductible amounts paid for panel services are not applied toward the deductible for nonpanel services.

The Petitioner's appeal is based on the assertion that no BCBSM document permits BCBSM to process claims in the order they are received as opposed to the actual date of service. While Petitioner may be correct that there is no language in the certificate or the riders that specifies that "claims are processed in the order that they are received," there is also no language to the contrary. This is a business decision BCBSM has made and is consistent with how Petitioner's claims were processed. As BCBSM noted in its response to this appeal, providers have up to 15 months to file their claims. It would be difficult to determine deductibles, which are calculated annually, if claims were processed by date of service. That practice would, in many instances, require the recalculation of deductibles long after the deductible period had ended.

The Commissioner finds that BCBSM's calculation of the Petitioner's 2010 deductibles was correct.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of June 16, 2011, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915(1), any person aggrieved by this order may seek judicial review no later than 60 days from the date of this order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner